IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3819 OF 2004.

IN

SUIT NO.3041 OF 2004

Noor Khatoon Be Rajauddin Shaikh. ... Plaintiff..

vs.

B.M.C. And Another. .... Defendants.

Ms. M.V.Thakkar with Ms.Avani Shah i/b. M/s.Gordhardas & Fozdar, for Plaintiff.

Mr.R.Y. Sirsikar, for Defendants 1 & 2.

CORAM: D.K.DESHMUKH,J.

DATED: 13th January, 2006

P.C.:-

1. This is a notice of motion taken out by the plaintiff. In the suit the plaintiff challenges the order passed by the Municipal corporation for demolition of the structure of the plaintiff. The case of the plaintiff is that the ground floor and the mezzanine floor of the

plaintiff was in existence prior to 19th July,1994. It is a common ground before me that if the mezzanine floor comes into existence before 19th July,1994 then it is not treated as an unauthorised work. I have heard the learned Counsel appearing for both the sides. Perusal of the order at Exhibit B to the plaint on the basis of which the demolition notice has been given shows that as per the assessment record of the year 1992-93 the ground floor was in existence. Perusal of that order further shows that as per the report of the Municipal Corporation for the year 1993-94 prepared on the basis of the inspection carried out on 28.1.1994, the mezzanine floor was also in existence. The submission of the learned Counsel appearing for the plaintiff that if during the inspection carried out by the Corporation on 28.1.1994 the Corporation has found that the mezzanine floor was in existence then it is obvious that the mezzanine floor was constructed before 19.7.1994 has considerable substance. Thus, from the order of the Municipal Corporation itself it appears that the mezzanine floor might have been in existence on 19.7.1994 and therefore, it may be entitled to protection. There is already an ad-interim order in force as a result of which the structure is protected. In my opinion, from the order itself it appears that the mezzanine floor might have been in existence before 19.7.1994, hence, the structure deserves to be protected. In this view of the matter therefore, the notice of motion is granted in terms of prayer clause (a). The notice of motion is disposed of.